FILED

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JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY MC DEP CLK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
CIVIL ACTION NO. 4:15-CV-103-FL

Carl E. Davis, Plaintiff;	)	**Complaint** (Discriminatory Reprisal, 42 U.S.C. 2000e)
V.	)	Jury Trial Demanded
BSH Home Appliances Corporation; Blue Arbor, Inc.; TESI Screening, Inc.; Defendants.	)	

1. This action arises under, and the jurisdiction of this Court is invoked under, the provisions of Section 706 of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., 28 U.S.C. § 1337 and § 1343.

2. Plaintiff, Carl Davis, is an African American male citizen of the United States and a resident of Jones County North Carolina.

3. Defendant, BSH Home Appliances is a corporation duly organized and existing under the laws of the State of Delaware, having a principal office and place of business located in Craven County, State of North Carolina, within the territorial jurisdictions of this court.

4. Defendant Blue Arbor, Inc. is a corporation duly organized and existing under the laws of the State of North Carolina, having a principal office and place of business located in Craven County, State of North Carolina, within the territorial jurisdictions of this court. On or about July 8 2013, Temporary Employee Services, Inc. filed Articles of Amendment with the North Carolina Secretary of State, changing its name to Blue Arbor, Inc.

5. TESI Screening, Inc. is a corporation duly organized and existing under the laws of the State of North Carolina, having a principal office and place of business located in Craven County, State of North Carolina, within the territorial jurisdictions of this court. On or about July 12 2013, TESI Staffing and Employee Screening Services, Inc. filed Articles of Amendment with the North Carolina Secretary of State, changing its name to TESI Screening, Inc.

6. For purposes of this complaint, the plaintiff will always refer to both defendants jointly, as TESI.

7. The Defendants are subject to the jurisdiction of this Court and is an "employer" as defined by 42 U.S.C. §2000e(b) in that it is engaged in an industry affecting commerce and has had more than fifteen (15) or more employees for each working day in each of the twenty (20) or more calendar weeks in the current calendar year.

8. Plaintiff has received from the EEOC a notice of his right to bring an action in this Court, and this action is initiated within ninety (90) days of receipt of that notice.

9. In July 2013, while looking through employment postings at the local Employment Security Commission office, plaintiff saw an ad for a "Setter" position for the defendant BSH's New Bern plant location. Plaintiff has previously performed the Setter positing at BSH and was qualified to perform the job.

10. Plaintiff had previously performed the "Setter" position while previously working for the defendant BSH and therefore decided to apply for the position. He took the ad and his paperwork to apply for the position to the defendant BSH's New Bern location and sought to apply for the position. The BSH human resources representative, Ms. White, told plaintiff that the only way he could get the "Setter" position would be to be placed at the BSH site through TESI.

11. Plaintiff then contacted TESI and asked to be hired and placed at the BSH site in the advertised position of Setter. The TESI agent advised plaintiff that she would look into his placement in the Setter position at BSH and call him back.

12. When the TESI agent called plaintiff back, she advised him that BSH would not allow him to work at the site because the plaintiff "had sued them before".

13. Plaintiff had previously filed an EEOC complaint against the defendant BSH in 2005, alleging discriminatory termination. That EEOC charge was resolved through a settlement between the parties and plaintiff returned to work for a few years. Ultimately plaintiff had stopped working in 2008 for the defendant as a result of his inability to return to work while recovering from a work related injury.

14. The reason why the defendant BSH refused to allow plaintiff to work at its plant in

the Setter position in August 2013 was in retaliation for the plaintiff's prior protected activity of pursuing his right to be free from racial discrimination in the workplace, which included filing a charge of discrimination with the EEOC.

15. The defendant BSH knew of plaintiff's previous EEOC activity because the human resources assistant, Ms. White, was working with the defendant at the time of plaintiff's prior EEOC complaint and had participated in the prior complaint. Also, the new Human Resources Manager, Wilson, pulled plaintiff's archived employment file during this time and viewed a copy of the prior EEOC charge.

16. The defendant BSH refused to allow plaintiff to apply for and/or hire him to the position of Setter in August 2013, in retaliation for his prior EEOC litigation.

17. The defendant also sought to accomplish this retaliation by falsely telling plaintiff he could only apply for the job through the temporary agency. But the defendant does hire former employees directly without going through the TESI agency. The defendant referred plaintiff to TESI as a subterfuge, in an attempt to retaliate against him and prevent from being hired for the position at BSH.

18. Plaintiff did not have to be hired through the TESI agency because plaintiff was not applying for an entry level position, and the defendant had hired other former employees directly into the position without requiring that they go through the TESI services.

19. The defendant's statement to the TESI representative that plaintiff had sued them before, was a direct reference to the plaintiff's prior protected activity of pursuing his right to be free from racial discrimination in the workplace, which included filing a charge of discrimination with the EEOC.

20. TESI refused to hire plaintiff and place him in the BSH plant because of plaintiff's prior protected activity of pursuing his right to be free from racial discrimination in the workplace, which included filing a charge of discrimination with the EEOC against BSH.

21. TESI and BSH are liable as joint employers. TESI employs workers and places them at the BSH plaint. While at the BSH plant, the TESI workers are supervised by BSH employees. The TESI workers' schedule is set by the BSH supervisors. The TESI workers are disciplined by the BSH supervisors. If plaintiff had been placed at the BSH plant by TESI, he

too would have been under the direct supervision and control of BSH supervisors.

22. TESI and BSH were joint employers at all times relevant to this action.

23. BSH retaliated against the plaintiff because of his protected activity when it refused to hire him into the Setter position at BSH, and any other position for which he may have qualified during the relevant time period.

24. TESI and BSH retaliated against the plaintiff because of his protected activity when it refused to hire him into the Setter position and any other position for which he may have qualified during the relevant time period.

25. As a result of the discriminatory acts of the defendant, plaintiff has suffered monetary damage, including but not limited to lost wages and benefits.

26. By reason of the conduct of the defendants, plaintiff has suffered emotional damage and injury and tremendous mental anguish and humiliation.

27. Further, by reason of the fact that the conduct of defendant as set forth hereinabove was purposeful, deliberate, intentional, and done with reckless disregard of the rights of plaintiff, plaintiff is entitled to recover punitive damages from the defendant in an amount proven at trial.

28. Plaintiff demands trial by jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

a). That plaintiff have a jury trial on all issues herein triable before a jury.
b). That plaintiff be awarded compensatory damages and punitive damages in an amount to be proven at trial, against the defendant.
c). That the Court award plaintiff the costs of this action, including a reasonable attorney's fee.
d). That the Court grant plaintiff such other or different relief as may be appropriate under the circumstances of this case.

This the ~~16~~ 15 (CD) day of June 2015

Carl E. Davis

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